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September 27, 2004

Ms. Marlene Dortch, Secretary Federal Communications Commission The Portals, TW-A325 445 12<sup>th</sup> Street, SW Washington, DC 20554

Re: Ex Parte Presentation – Review of the Section 251 Unbundling Obligations of

Incumbent LECs (CC Docket Nos. 01-338, 96-98, 98-147); Unbundled Access to

Network Elements (WC Docket 04-313)

Dear Ms. Dortch:

On September 24, 2004, Dave Baker, EarthLink's Vice President of Law and Public Policy, and the undersigned met with Scott Bergmann, legal advisor to Commissioner Adelstein, regarding the above-referenced dockets. During the meeting, EarthLink discussed its pending petition for reconsideration to reinstate the line sharing UNE and its August 10, 2004, written *ex parte* presentation in the above-referenced dockets, including the need for interim relief from the October 3<sup>rd</sup> line sharing deadline. EarthLink also discussed the recently announced interim line sharing arrangements between Covad and Qwest, SBC, and Verizon. EarthLink noted that these arrangements were positive steps in light of the October deadline but that they were temporary only (in Verizon's case just four months), and the Commission needs to take swift action to reinstate line sharing. EarthLink discussed various ways that the Commission could do that, including voting on EarthLink's pending reconsideration petition or deciding the matter in the context of the permanent UNE rules.

Further, in EarthLink's view, a grant of interim relief to preserve line sharing would not negatively impact the Commission's chances of success on the writ of mandamus filed against the August 20<sup>th</sup> Interim Order, which is currently pending before the D.C. Circuit.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in each of the above-referenced dockets for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

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Mark J. O'Connor Counsel for EarthLink, Inc.